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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ALEXANDER THOUKYDIDES, DEAN ARMSTRONG

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Appeal 2015-001936  
Application 13/387,496  
Technology Center 2400

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Before JEFFREY S. SMITH, JOHN R. KENNY, and  
SCOTT E. BAIN, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the rejection of claims 1–26, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *Illustrative Claim*

1. A communication device configured to communicate with a first wireless network by means of a first protocol and communicate with a second wireless network by means of a second protocol, the second protocol specifying that, in response to a signal of a pre-defined format, a device on the second network should not transmit on the second network for at least one period of time, the communication device including:

a first transceiver configured to transmit a signal according to the second protocol so as to indicate to devices on the second network that they should not transmit during a first period of time, and

a second transceiver configured to, subsequent to the above transmitting step, transmit or receive signals during the first period of time, and

control logic configured to control the first and second transceivers such that at least two of the following criteria are used to determine the signal used to indicate to devices on the second network that they should not transmit during a first at least one period of time:

(i) when the signal transmitted by the second transceiver is due to begin imminently, the first transceiver transmits the signal according to the second protocol so as to indicate to devices on the second network that they should not transmit during the first period of time by sending to the devices, immediately prior to the start of the communication between the

communication device and the first wireless network, a frame indicating the period of time that the communication device will be communicating with the first wireless network; and

(ii) when the signal transmitted by the second transceiver is known in advance, the first transceiver transmits the signal according to the second protocol so as to indicate to devices on the second network that they should not transmit during the first period of time by sending, to the devices, a frame containing an indication of at least one period of time during which the communication device may be communicating with the first wireless network; and

(iii) when the signal transmitted by the second transceiver comprises a bulk data transfer and there are no latency restrictions on the second network, the first transceiver transmits the signal according to the second protocol so as to indicate to devices on the second network that they should not transmit during the first period of time by sending, to the devices, a frame containing an indication of a period of time immediately following the frame during which the communication device may be communicating with the first wireless network.

*Prior Art*

Moreton	US 2004/0013128 A1	Jan. 22, 2004
Hill	US 2006/0171304 A1	Aug. 3, 2006
Gonikberg	US 2013/0163460 A1	Jun. 27, 2013

*Examiner's Rejections*

Claims 1–3, 5–9, and 11–26 stand rejected under 35 U.S.C. § 102(b) as anticipated by Moreton.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Moreton and Gonikberg.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Moreton and Hill.

### ANALYSIS

We adopt the findings of fact made by the Examiner in the Final Action and Examiner's Answer as our own. We concur with the Examiner's decisions for the reasons given in the Examiner's Answer. We highlight the following for emphasis.

Claim 1 recites "control logic configured to control the first and second transceivers such that at least two of the following criteria are used to determine the signal used to indicate to devices on the second network that they should not transmit during a first at least one period of time." Appellants find support for the claimed criteria in the Specification's disclosure of a duration field in a clear-to-send (CTS) frame, a quiet period for beacon frames, and a point coordination function (PCF) to support a period of contention-free operation. App. Br. 3, 4 (citing Spec. 11:1-15:30).

The Examiner finds Moreton discloses "at least two of the following criteria" in describing the CTS frame and the beacon frame. Final Act. 5, 6. In particular, the Examiner finds that the beacon frame disclosed by Figure 6 and Paragraphs 85 and 86 of Moreton describes the beacon frame subsequently disclosed by Figure 9 and Paragraph 96. Ans. 5.

Appellants contend Moreton discloses two ways to service two frequency channels, each of which involve only a single criterion, not at least two criteria as required by claim 1. App. Br. 8. In particular,

Appellants contend the beacon frame of Paragraph 96 and the beacon frame of Figure 6 and Paragraphs 85–86 of Moreton are different beacon frames. App. Br. 9; Reply Br. 1–4. According to Appellants, Paragraph 85 of Moreton is only related to Figure 7, not to Figure 9. Reply Br. 2. Appellants assert that a person of ordinary skill in the art would interpret the description of the beacon frame of Figure 9 and Paragraph 96 as a conventional beacon frame by reading the disclosure of Moreton in conjunction with the knowledge in the art. Reply Br. 4.

Appellants' contention is based on the premise that, according to Appellants, Paragraph 88 (describing Figure 7) appears to refer to Paragraph 85, but Paragraphs 95–100 (describing Figure 9) do not. *Id.* However, Paragraph 85 of Moreton (a) is directly above Paragraph 86, which describes Figure 6, not Figure 7, of Moreton; and (b) does not describe the beacon frame of Figure 6 as a separate embodiment from the subsequent discussions of beacon frames by Moreton. Further, Figure 9 and Paragraph 96 do not describe that the beacon frame is different than the beacon frame previously described at length in Figure 6 and Paragraphs 85 and 86 of Moreton.

Appellants do not present persuasive evidence to support their argument that a person of ordinary skill in the art would interpret the beacon frame of Figure 9 as something other than the beacon frame previously described by Moreton. It is well settled that mere lawyer's arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA

1974). Nor can it take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977).

We agree with the Examiner's findings that Figure 6 and Paragraphs 85–86 of Moreton describe details of the beacon frame described in the subsequent disclosure of Moreton, not a different beacon frame not mentioned in the subsequent disclosure.

We further highlight Paragraph 70 of Moreton discloses that to share a medium, the 802.11 standard uses a number of methods including use of a duration field in frames, use of the 802.11h quiet period, and not sending HCF polls. Appellants' contention that the claimed criteria is not disclosed by the prior art is inconsistent with Moreton's disclosure that the claimed criteria is part of the 802.11 standard.

Appellants also contend that Moreton does not disclose a first transceiver and a second transceiver as claimed. Reply Br. 5. The Examiner finds that Moreton discloses the first and second transceivers in describing an access point having separate antennas, amplifiers, and drivers, each configured to transmit a signal according to an 802.11a and an 802.11b protocol, respectively. Ans. 8. Appellants do not persuasively rebut the Examiner's findings.

We sustain the rejection of claim 1 under 35 U.S.C. § 102. Appellants do not present arguments for separate patentability of claims 2–26 which fall with claim 1.

DECISION

The Examiner's rejections of claims 1–26 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED